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UNITED STATES DISTRICT COURT
 DISTRICT OF OREGON- PORTLAND DIVISION

ROBBIE D. BISPO,)	
)	
Plaintiff,)	No. 3:05-cv-01223-BR
)	
v.)	
)	STIPULATION OF PARTIES
ROBERTSHAW CONTROLS COMPANY,)	REGARDING JOINT PROPOSED
)	MOTION SCHEDULE
Defendant.)	

I. RECITAL

Pursuant to the Court's Order requiring submission of a proposed joint motion schedule for all matters that the parties sought to have the Court resolve prior to trial, the parties exchanged drafts of proposed motions and subject matter prior to the Court's submission deadline. In discussion and agreement between counsel, the following motions and issues have been stipulated and agreed:

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STIPULATION OF PARTIES REGARDING
 JOINT PROPOSED MOTION SCHEDULE - Page 1

II. STIPULATED LEGAL ISSUES TO BE RESOLVED IN ADVANCE OF TRIAL

1. The parties stipulate and will not challenge that this Court, sitting in diversity, applies the substantive state law of California and federal procedural law pursuant to *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938).

2. The parties stipulate, agree and will not challenge that plaintiff's claim is limited to the issue of whether the Robertshaw R110 control valve is design defective pursuant to California's Risk-Benefit test. All claims of warnings, instructions, manufacturing defect, or defect pursuant to the consumer expectation test have been dismissed.

3. The parties stipulate and agree that plaintiff will not pursue a claim of defect in design based upon lack of a gas detector.

4. The parties stipulate and agree that plaintiff will not pursue claims for past wages, future income loss and/or earning capacity impairment as Plaintiff has withdrawn these claims pursuant to the Pretrial Order and requested amendment to the pleadings.

III. STIPULATED MOTIONS IN LIMINE

1. The parties stipulate and agree that no evidence or testimony (either lay or expert) that Robertshaw failed to adequately inspect or test the R110 control valve will be presented at trial.

2. The parties stipulate and agree that no evidence or testimony (either lay or expert) that Robertshaw was negligent in the manufacture or inspection of the R110 control valve will be presented at trial. The evidence will address the issue of the California Risk-Benefit test.

3. The parties stipulate and agree that no evidence or testimony (either lay or expert) regarding claims of inadequate warnings by American Water Heater will be presented at trial.

4. The parties stipulate and agree that no evidence or testimony (either lay or expert) regarding claims of manufacturing defect associated with specific R110 control valve or components will be presented at trial.

5. The parties stipulate and agree that no evidence or testimony (either lay or expert) regarding claims of design defect in terms of the expectations of an ordinary consumer will be presented at trial.

6. The parties stipulate and agree that all witnesses, including expert witnesses, should be excluded and prohibited from otherwise hearing testimony of other witnesses at trial.

7. The parties stipulate and agree to disclose a witness schedule 24 hours in advance of trial

8. The parties stipulate and agree that no evidence or testimony (either lay or expert) regarding alleged financial burden on Plaintiff or Defendant or the financial condition of Plaintiff or Defendant shall be presented at trial.

9. The parties stipulate and agree that no evidence or testimony (either lay or expert) regarding settlement offers, demands, negotiations or discussions between Plaintiff and Robertshaw shall be presented at trial.

10. The parties stipulate and agree that exhibits shall not be referenced or discussed (including display to jury) prior to admission of said exhibit or with the Court's agreement of counsel.

11. The parties stipulate and agree that only testimony (either lay or expert) or evidence disclosed in disclosures, interrogatories, depositions and/or pretrial submissions will be permitted at trial.

12. The parties stipulate and agree that no testimony (either lay or expert) or evidence of insurance, save for that allowed under applicable substantive California law, shall be presented at trial.

13. The parties stipulate and agree that there will be no testimony (either lay or expert) or evidence regarding the "golden rule" or asking jury to place themselves in position of the Plaintiff or Defendant presented at trial.

14. The parties stipulate and agree that no testimony (either lay or expert) or evidence regarding plaintiff's use of recreational drugs well before the incident will be presented at trial.

15. The parties stipulate and agree that no testimony (either lay or expert) or evidence regarding plaintiff obtaining a medical marijuana card in seeking relief from the pain suffered because of his burn injuries will be presented at trial.

16. The parties stipulate and agree that no testimony (either lay or expert) or evidence regarding a criminal investigation into the conduct of Mike Bispo, plaintiff's brother, will be presented at trial.

IV. PROPOSED ORDER

Having stipulated and agreed to the issues set forth in this Stipulation, the Parties request that the Court enter an order regarding these matters.

Jointly submitted this 10th day of January 2012.

PICKETT DUMMIGAN LLP

MERRICK HOFSTEDT & LINDSEY, P.S.

s/ J. Randolph Pickett

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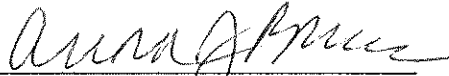
For Court Use Only

The foregoing Stipulation of Parties Regarding Joint Proposed Motion Schedule is:

☒ Approved. ✓

☐ Approved as amended by interlineation.

SO ORDERED this 11th day of January, 2012.



Honorable Anna J. Brown,
United States District Judge